

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

SCOTT and RHONDA BURNETT,)
RYAN HENDRICKSON,)
JEROD BREIT, SCOTT TRUPIANO, and)
JEREMY KEEL, on behalf of themselves and)
all others similarly situated,)
Plaintiffs,)
vs.) Case No. 4:19-cv-00332-SRB
NATIONAL ASSOCIATION OF)
REALTORS, REALOGY HOLDINGS)
CORP., HOMESERVICES OF AMERICA,)
INC., BHH AFFILIATES, LLC, HSF)
AFFILIATES, LLC, RE/MAX LLC, and)
KELLER WILLIAMS REALTY, INC.,)
Defendants.)

JOINT MOTION TO MODIFY THE FOURTH AMENDED SCHEDULING ORDER

Defendants HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, RE/MAX, LLC, Realogy Holdings Corp., Keller Williams Realty, Inc., and the National Association of Realtors® (“Defendants”) and Plaintiffs (Defendants and Plaintiffs, collectively “Parties”) hereby jointly move, pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure to amend the Fourth Amended Scheduling Order (Doc. #543).

To allow the Parties sufficient time to complete the remaining fact discovery, expert discovery, and meet dispositive motion and *Daubert* deadlines, the Parties request that the Court modify the Scheduling Order as set forth below. The Parties submit that there is good cause to modify the Fourth Amended Scheduling Order pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure.

The modified deadlines are as follows:

I. Merits Expert Depositions:

- A. Defendants' merits expert with primary responsibility for responding to the Craig Schulman and Roger Alford reports will be disclosed on July 14, 2022, with back-up data to be provided within 5 days, and made available for deposition on July 28 or 29 in San Francisco;
- B. Defendants' expert responding primarily to Douglas Minor will be disclosed on July 1, 2022, with back-up data to be provided within 5 days, and be made available for deposition at a mutually agreeable date and location thereafter;
- C. Defendants' expert responding primarily to Todd Reynolds will be disclosed on July 1, 2022 with back-up data to be provided within 5 days, and be made available for deposition at a mutually agreeable date and location thereafter;
- D. Any separate expert(s) that Defendants engage to respond to Jeff Rothbart (if any) will be disclosed on July 1, 2022, with back-up data to be provided within 5 days, and will be made available for deposition at a mutually agreeable date and location thereafter;
- E. Any other expert(s) that Defendants engage for the purposes of trial (if any) will be disclosed on July 1, 2022, with back-up data to be provided within 5 days, and will be made available for deposition at a mutually agreeable date and location thereafter; and
- F. Plaintiffs will serve any and all rebuttal or supplemental reports from Plaintiffs' previously-designated experts on or before August 10, 2022, with back-up data to be provided within 5 days.¹ If such rebuttal or supplemental reports warrant deposition proceedings, then Defendants may seek to depose such experts on or before August 17, 2022.

II. Remaining Fact Discovery:

- A. HomeServices will seek to confirm Jo-Ann Sloan for a deposition prior to August 12; if HomeServices does not believe it can secure Ms. Sloan's deposition, HomeServices will inform Plaintiffs by June 30 so that Plaintiffs may subpoena Ms. Sloan;
- B. Plaintiffs will provide written discovery and documents from Named Plaintiffs Dreyer, Ellis, and Harvey prior to July 10, 2022. These Named Plaintiffs shall be made available for depositions prior to August 12, 2022.
- C. The Parties shall serve Requests for Admission, if any, by July 7, 2022, with answers due within 30 days thereafter;
- D. The Corporate Defendants shall each perform one final transactional data refresh. The data shall run through June 1, 2022 (or a date as close to June 1, 2022 as reasonably

¹ Plaintiffs reserve the right to seek an extension of the August 10 deadline if Defendants' data is not produced in a format accessible and useable by Plaintiffs' experts.

possible); and Corporate Defendants shall produce the data by June 22, 2022². This data update shall also include the temporal update of the class member identification data. Along with this refresh, Defendants shall provide the names of all defense counsel who may be a class member so that Plaintiffs' expert can exclude those attorneys from the damages analysis.

E. The Parties will schedule the depositions of the following deponents prior to August 12, 2022:

- a. Linda O'Connor
- b. HSF/BHH 30(b)(6) Deposition³
- c. Realogy/Anywhere 30(b)(6) Deposition
- d. NAR 30(b)(6) Deposition (On or before August 3)
- e. RE/MAX 30(b)(6) Deposition

Unless previously agreed to, the Parties do not seek an extension of any other discovery deadlines.

III. Dispositive Motion and Daubert Deadlines

- A. All dispositive motions, except those under Rule 12(h)(2) or (3), shall be filed on or before August 29, 2022. All briefs in opposition shall be due on or before October 10, 2022. All reply briefs in support of the motions shall be due on or before November 7, 2022. Oral argument on the motions will be held on November 18, 2022.
- B. All motions to strike trial expert designations or preclude expert testimony premised on *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), shall be filed on or before August 29, 2022. All briefs in opposition shall be due on or before October 10, 2022. All reply briefs in support of the motions shall be due on or before November 7, 2022. Oral argument on the motions will be held on November 18, 2022.

The Parties do not seek a continuance of the trial date.

² HomeServices and perhaps other Defendants and Plaintiffs have a disagreement on this deadline. HomeServices has committed to use its best efforts to meet the June 22 date but cannot make any firm commitment prior to July 1, 2022. Plaintiffs' position is that if HomeServices (or another Defendant) fails to produce accessible and useable data on June 22, Defendants will have to live with any time constraints that may result.

³ Plaintiffs reserve the right to depose the HomeServices 30(b)(6) corporate representative based on documents produced immediately before the HomeServices 30(b)(6) corporate representative deposition that occurred on May 25, 2022. Defendant HomeServices' position is that the HomeServices 30(b)(6) corporate representative closed on May 25, 2022 and may not be reopened.

Dated: June 16, 2022

Respectfully submitted by:

/s/ Brandon J.B. Boulware

Brandon J.B. Boulware (MO # 54150)
Jeremy M. Suhr (MO # 60075)
Erin D. Lawrence (MO # 63021)
BOULWARE LAW LLC
1600 Genessee, Suite 416
Kansas City, MO 64102
Tele: (816) 492-2826
Fax: (816) 492-2826
brandon@boulware-law.com
jeremy@boulware-law.com
erin@boulware-law.com

KETCHMARK & McCREIGHT

Michael S. Ketchmark (MO # 41018)
Scott A. McCreight (MO # 44002)
Ben H. Fadler (MO # 56588)
11161 Overbrook Road, Suite 210
Leawood, KS 66211
Tele: (913) 266-4500
Fax: (913) 317-5030
mike@ketchmclaw.com
smccreight@ketchmclaw.com
bfadler@ketchmclaw.com

WILLIAMS DIRKS DAMERON LLC

Matthew L. Dameron (MO # 52093)
Eric L. Dirks (MO # 54921)
Amy R. Jackson (MO # 70144)
Courtney M. Stout (MO # 70375)
1100 Main Street, Suite 2600
Kansas City, MO 64105
Tele: (816) 945-7110
Fax: (816) 945-7118
matt@williamsdirks.com
dirks@williamsdirks.com
amy@williamsdirks.com
cstout@williamsdirks.com

Counsel for Plaintiffs

/s/ Brian C. Fries

Brian C. Fries (MO # 40830)
LATHROP GPM LLP
2345 Grand Avenue, Suite 2200
Kansas City, MO 64108-2618
(816) 292-2000
brian.fries@lathropgpm.com

Robert D. MacGill (pro hac vice)
Matthew T. Ciulla (pro hac vice)
Scott E. Murray (pro hac vice)
MacGILL PC
156 E. Market St., Suite 1200
Indianapolis, IN 46204
(317) 721-1253
robert.macgill@macgilllaw.com
matthew.ciulla@macgilllaw.com
scott.murray@macgilllaw.com

Jay N. Varon (pro hac vice)
Jennifer M. Keas (pro hac vice)
FOLEY & LARDNER LLP
3000 K Street NW, Suite 600
Washington, DC 20007
(202) 672-5300
jvaron@foley.com
jkeas@foley.com

*Counsel for Homeservices of America, Inc., BHH
Affiliates, LLC, HSF Affiliates, LLC*

/s/ David R. Buchanan

David R. Buchanan (MO # 29228)
BROWN & JAMES, PC
2345 Grand Boulevard, Suite 2100
Kansas City, MO 64108
(816) 472-0800
dbuchanan@bjpc.com

Timothy Ray (pro hac vice)
HOLLAND & KNIGHT LLP
150 North Riverside Plaza, Suite 2700
Chicago, IL 60606
(312) 263-3600
timothy.ray@hklaw.com

David C. Kully (pro hac vice)
Anna P. Hayes (pro hac vice)
HOLLAND & KNIGHT LLP
800 17th Street NW, Suite 1100
Washington, DC 20530
(202) 469-5415
david.kully@hklaw.com
anna.hayes@hklaw.com

Counsel for Keller Williams Realty, Inc.

/s/ Karrie J. Clinkinbeard

Megan J. Ochs (MO # 54673)
Karrie J. Clinkinbeard (MO #51413)
ARMSTRONG TEASDALE LLP
2345 Grand Boulevard, Suite 1500
Kansas City, MO 64108
(816) 221-3420
mochs@atllp.com
kclinkinbeard@atllp.com

Kenneth Michael Kliebard (pro hac vice)
MORGAN LEWIS & BOCKIUS LLP
110 N. Wacker Drive, Suite 2800
Chicago, IL 60606
(312) 324-1000
kenneth.kliebard@morganlewis.com

Stacey Anne Mahoney (pro hac vice)
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
(212) 309-6000
stacey.mahoney@morganlewis.com

William T. McEnroe (pro hac vice)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 10178
(215) 963-5000
william.mcenroe@morganlewis.com

Counsel for Realogy Holdings Corp.

/s/ Danne W. Webb
Danne W. Webb (MO # 39384)
Andrea S. McMurtry (MO #62495)
HORN AYLWARD & BANDY, LLC
2600 Grand Blvd., Suite 1100
Kansas City, MO 64108
(816) 421-0700
dwebb@hab-law.com
amcmurtry@hab-law.com

Odeshoo Hasdoo (pro hac vice)
JONES DAY
77 W Wacker, Suite 3500
Chicago, IL 60605
(312) 782-3939
ehasdoo@jonesday.com

Jeffrey A. LeVee (pro hac vice)
JONES DAY
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 243-2572
jlevée@jonesday.com

Counsel for RE/MAX, LLC

/s/ Charles W. Hatfield

Charles W. Hatfield (MO # 40363)
Alexander C. Barrett (MO # 68695)
STINSON LLP
230 W. McCarty Street
Jefferson City, MO 65101
Chuck.hatfield@stinson.com
Alexander.barrett@stinson.com

Jack R. Bierig (pro hac vice)
SCHIFF HARDIN LLP
233 South Wacker Dr., Suite 7100
Chicago, Illinois 60606
(312) 258-5500
jbierig@schiffhardin.com

Suzanne L. Wahl (pro hac vice)
SCHIFF HARDIN LLP
350 South Main Street, Suite 210
Ann Arbor, Michigan 48104
(734) 222-1517
swahl@schiffhardin.com

Counsel for National Association of Realtors®

CERTIFICATE OF SERVICE

I, Brian C. Fries, an attorney, hereby certify that on June 16, 2022, I caused the foregoing document to be served electronically on all parties of record via this Court's CM/ECF system.

/s/ Brian C. Fries _____

An Attorney for Defendants
HomeServices of America, Inc., BHH
Affiliates, LLC and HSF Affiliates, LLC